

REMARKS

Reconsideration of the application as amended is respectfully requested. In the Office Action, the Examiner rejected claims 19, 21-23 and 25-40. By the present Response, no claims have been amended, canceled or added. Accordingly, claims 19, 21-23 and 25-40 remain currently pending. Reconsideration and allowance of all pending claims is requested in view of the following remarks.

Claim Rejections Under 35 U.S.C. § 102

Anticipation under Section 102 can be found only if a single reference shows exactly what is claimed. *Titanium Metals Corp. v. Banner*, 778 F.2d 775, 227 U.S.P.Q. 773 (Fed. Cir. 1985). For a prior art reference to anticipate under Section 102, every element of the claimed invention must be identically shown in a single reference. *In re Bond*, 910 F.2d 831, 15 U.S.P.Q.2d 1566 (Fed. Cir. 1990). To maintain a proper rejection under Section 102, a single reference must teach each and every element or step of the rejected claim. *Atlas Powder v. E.I. du Pont*, 750 F.2d 1569 (Fed. Cir. 1984). The prior art reference also must show the *identical* invention “*in as complete detail as contained in the ... claim*” to support a *prima facie* case of anticipation. *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 U.S.P.Q. 2d 1913, 1920 (Fed. Cir. 1989) (Emphasis added). Accordingly, the Applicants need only point to a single element not found in the cited reference to demonstrate that the cited reference fails to anticipate the claimed subject matter.

In the Office Action, the Examiner rejected claims 19, 21-23 and 25-40 under 35 U.S.C. § 102(e) and/or § 102(b) as anticipated by various references. However, as discussed below, Applicants respectfully assert that the pending claims are not anticipated. In particular, the U.S. Patent No. 5,828,553 (hereinafter the "Chiou reference") and U.S. Patent No. 5,870, 288 (hereinafter the "Chen '288 reference") do not disclose all of the features recited in the instant claims. Furthermore, the claimed invention antedates U.S. Patent No. 6,421,242 (hereinafter the "Chen '242 reference") relied upon by the Examiner.

Rejections under Section 102 in view of Chiou.

Independent Claim 19

In the Office Action, the Examiner rejected claims 19, 21-23, 27-31, and 34 under U.S.C. § 102(e) as being clearly anticipated by Chiou. With regard to independent claim 19, the Examiner maintained his previous rejection and responds to Applicants' previous comments, stating:

The applicant argues in their remarks that Chiou does not disclose a body portion that is configured to bend to achieve separation of the retaining arms.

The examiner disagrees. Chiou's body portion (3) is capable of performing the intended function of bending to separate the retaining arms.

Office Action mailed August 25, 2005, p. 3.

Applicants respectfully traverse this rejection.

In the present case, Chiou does not anticipate Applicants' claims under 35 U.S.C. § 102(e) because every element of the claimed invention is not identically shown in Chiou. Specifically, independent claim 19 recites "wherein the body portion is configured to *bend and separate* the first retaining arm and the second retaining arm." (Emphasis added). This recitation is supported in the application at page 13, lines 21-23. Furthermore, the plain and ordinary meaning of the term "bend" is to "to turn or force from straight or even to curved or angular." *See Merriam Webster's Collegiate Dictionary*, p. 106 (10th Ed., 2002). Hence, this definition is in accord with the recitations of claim 19.

Contrary to the Examiner's assertion, the Chiou reference fails to disclose a body portion 3 configured to bend and separate retaining arms as recited in claim 19. Further, the Examiner's assertion that the body portion 3 of Chiou bends to separate the first 21 and second 11 retaining arms is unsupported by Chiou. In particular, Chiou discloses a fastener which is tightened and loosened by operation of the lever 4, not by the bending of the body portion 3. *See Chiou*, col. 1, lines 6-8, 40-44, and col. 2, lines 43-47. This linear separation is also depicted by Figs. 3 and 4 of the Chiou reference which depict the disclosed fastener in respective loose and tight configurations. As evidenced by Figs. 3

and 4 and by the respective text, the clamping plates 1 and 2 are linearly separated by the operation of the lever 4, not by bending the body portion 3, as asserted by the Examiner.

Id.

Indeed neither the text nor the figures of the Chiou reference appear to disclose the subject matter alleged by the Examiner, nor has the Examiner provided any citation to the Chiou reference to indicate where the asserted subject matter may be found. Absent such an indication of the recited subject matter, no *prima facie* case of anticipation is believed to exist with regard to claim 19 in view of the Chiou reference. If the Examiner wishes to maintain the present rejection, the Applicants respectfully request that the Examiner indicate the portion of the Chiou reference relied upon as disclosing the respective subject matter, as required under 37 C.F.R. § 1.104(c)(2). Absent such an indication, withdrawal of the present rejection of independent claim 19, and those claims depending therefrom, is respectfully requested.

Independent Claim 28

With regard to independent claim 28, the Examiner provided the following rejection: "Chiou, as applied above to claim 19, and further discloses two cam arm side extensions (42, 43)." Office Action mailed August 25, 2005, p. 3. Applicants respectfully traverse this rejection.

In the present case, Chiou does not anticipate claim 28 under 35 U.S.C. § 102(e) because every element of the claimed invention is not identically shown in Chiou. Specifically, independent claim 28 recites “two or more cam arm side extensions configured to extend past the body portion when the cam arm is substantially adjacent to the body portion.”

In contrast to the Applicants’ claims, Chiou fails to disclose cam arm side extensions 42, 43 extending *past* the body portion when the cam arm is substantially adjacent to the body portion. In particular, as evidenced by Figs. 3 and 4 of the Chiou reference, the parallel lugs 42 and 43 (construed as the recited extensions by the Examiner) do not extend past any portion of the body portion 3 in either the respective loose or tight configuration of the lever 4. Instead, the parallel lugs 42 and 43 appear to always be beside the body portion 3 and do not appear to extend past any part of the body portion 3 in any configuration or at any time during operation.

Indeed neither the text nor the figures of the Chiou reference appear to disclose the recited subject matter, nor has the Examiner provided any citation to the Chiou reference to indicate where the asserted subject matter may be found. Absent such an indication of the recited subject matter, no *prima facie* case of anticipation is believed to exist with regard to claim 28 in view of the Chiou reference. If the Examiner wishes to maintain the present rejection, the Applicants respectfully request that the Examiner

indicate the portion of the Chiou reference relied upon as disclosing the respective subject matter, as required under 37 C.F.R. § 1.104(c)(2). Absent such an indication, withdrawal of the present rejection of independent claim 28, and those claims depending therefrom, is respectfully requested.

Rejection of Independent Claim 35 Under Section 102 in view of Chen '288.

In the Office Action, the Examiner rejected independent claim 35 under 35 U.S.C. 102(b or e) as anticipated by Chen '288. Specifically, the Examiner stated:

Regarding claim 35, Chen discloses

- A body portion (103) configured to bend and separate the first retaining arm (12) and the second retaining arm (11), i.e., the shape of the body portion will allow it to bend to separate the first and second retaining arm
- A first retaining arm (12) coupled to the body portion
- A second retaining arm (11) coupled to the body portion
- A disengagement arm (10a)
- A cam arm (2 or 3)

wherein the body portion (103), first and second retaining arms (11, 12) and the disengagement arm (10a) are a single piece.

Office Action mailed August 25, 2005, p. 4.

Applicants traverse this rejection. In the present case, Chen '288 does not anticipate Applicants' claims under 35 U.S.C. § 102(b or e) because every element of the claimed invention is not identically shown in Chen '288. Specifically, independent claim

35 recites first and second retaining arms and a disengagement arm which are each coupled to the recited body portion. These recitations conform to the ordinary and plain meaning of the term “arm” in this context, which is “a slender part of a structure, machine, or an instrument projecting from a main part, axis, or fulcrum.” *See* Merriam Webster’s Collegiate Dictionary, p. 62 (10th Ed., 2002).

The Chen ‘288 does not show such separate retaining and disengagement arms which are each coupled to the body portion. Instead, the retaining arm (11, 12) asserted by the Examiner appears to be part of the same arm structure as the asserted disengagement arm (10a). Chen ‘288, Figs. 1-3. Alternatively, if the retaining arm (11, 12) were construed to be a separate structure from the disengagement arm (10a), the respective retaining arm is not coupled to the body portion, as recited by claim 35, but is instead coupled to the asserted disengagement arm. *Id.* Regardless, the Chen ‘288 reference does not show all of the recited arm structures, i.e., a first and second retaining arm and a disengagement arm, or, if all of the arm structures are present, does not disclose them in the recited configuration, i.e., each coupled to the body portion.

Furthermore, the Applicants respectfully disagree that the resilient arm 10a corresponds to a disengagement arm, as recited in claim 35. In particular, the Examiner appears to have read out the term “disengagement” in formulating the present rejection. The Examiner characterizes resilient arm 10a of Chen ‘288 as a disengagement arm of the disclosed latch member. Office Action, p. 4. However, nowhere in the Chen ‘288

specification is the resilient arm 10a mentioned as taking part in disengaging latch member 100. Further, the Chen '288 reference discusses the disengagement of the latch member 100 in detail, however the disclosed disengagement procedure does not appear to involve the resilient arm 10a or its use as a disengagement arm. Chen '288, col. 3, line 66 to col. 4, line 9. Accordingly, Applicants respectfully submit that resilient arm 10a of the Chen '288 reference is not a disengagement arm, as set forth by Applicants' claims.

Thus, Applicants respectfully assert that Chen '288 does not disclose all of the features recited in independent claim 35. Accordingly, Applicants respectfully assert that no *prima facie* case of anticipation exists with regard to independent claim 35 and dependent claims therefrom. With the foregoing in mind, Applicants respectfully request reconsideration and allowance of claim 35-40.

Rejection of Independent Claims 19 and 28 under Section 102 in view of Chen '242.

In the Office Action, the Examiner rejected claims 19, 25, 26, 28, 32, and 33 under 35 U.S.C. § 102(e) as being clearly anticipated by the Chen '242 reference. Applicants respectfully traverse this rejection. In response to this rejection, the Applicants have provided copies of the Rule 131 Declarations prepared and executed by the Applicants for a related case (Serial No. 10/680,330) in which the Chen '242 reference was relied upon by the Examiner. If requested by the Examiner, the Applicants will provide freshly executed Rule 131 Declarations with the heading information revised

to reflect the present case, however the present Declarations are believed to address the substance of the Examiners rejection. In short, Applicants respectfully assert that the submitted Rule 131 Declarations and their corresponding exhibit establish, with a sufficient showing of facts, that the presently claimed subject matter was *conceived and reduced to practice prior to* the earliest possible effective date of Chen '242, which, as discussed further below, is July 20, 2001. Thus, Applicants antedate the Chen '242 reference. Accordingly, Applicants respectfully request that the Chen '242 reference be removed from consideration.

Legal Requirements for a Rule 131 Declaration

To establish prior invention, an applicant must present a "showing of facts [that] shall be such, in character and weight, as to establish reduction to practice prior to the effective date of the reference, or conception of the invention prior to the effective date of the reference coupled with due diligence from prior to said date to a subsequent reduction to practice or to the filing of the application." 37 C.F.R. § 1.131(b). Thus, an applicant can antedate a cited reference by demonstrating an actual reduction to practice prior to the earliest possible effective date of the cited reference, and this demonstration stands on its own. To establish actual reduction to practice of the claimed invention, an applicant must show that the apparatus actually existed and worked for its intended purpose. See M.P.E.P. § 715.07(II). However, the Federal Circuit acknowledges that there are some devices so simple that a mere construction of them is all that is necessary to constitute

reduction to practice. See *In re Ashai/America Inc.*, 637 U.S.P.Q.2d 1204, 1206 (Fed. Cir. 1995).

Furthermore, with respect to the required “facts,” the M.P.E.P. states that “when reviewing a 37 C.F.R. 1.131 affidavit or declaration, the examiner must consider all of the evidence presented in its entirety, including the affidavits or declarations and all accompanying exhibits, records and ‘notes.’ ” See M.P.E.P. § 715.07(I). Moreover, “an accompanying exhibit need not support all of the claimed limitations but rather a missing feature may be supplied by the declaration itself.” *Ex parte Ovshinsky*, 10 U.S.P.Q.2d 1075, 1077 (PTO Bd. App. 1989) (citing *Ex parte Swaney*, 89 U.S.P.Q. 618 (PTO Bd. App. 1950)). Indeed, “it is entirely appropriate for [an applicant] to rely on a showing of facts set forth in the Rule 131 declarations themselves to establish conception of the invention prior to the effective date of the reference.” *Id.*

Earliest Effective Date of Chen’242

Chen ‘242, on its face, presents a filing date of July 20, 2001, and has no claim of priority. See Chen ‘242, front page. Accordingly, the earliest possible effective date of Chen ‘242 is this July 20, 2001 filing date.

The Claimed Subject Matter Antedates Chen'242

As provided in Paragraph 3 of the Declarations of Gregory C. Franke, Donald J. Hall, and Jeffrey A. Lambert (hereinafter "the Franke et al. Declarations"), inventors of record Gregory C. Franke, Donald J. Hall, and Jeffrey A. Lambert declare that the claimed subject matter of the above-referenced patent application was conceived prior to July 21, 2001, the earliest possible effective date of Chen '242. This conception is evidenced by a copy of a photograph of a clip as recited in the pending claims, which was actually reduced to practice prior to July 20, 2001, and is labeled Exhibit "A."

As indicated by paragraph 4 of the Franke et al. Declarations, Gregory C. Franke, Donald J. Hall, and Jeffrey A. Lambert, inventors of record, declare that the invention disclosed and presently claimed in the instant application was actually reduced to practice prior to July 21, 2001. As noted above, this reduction to practice is evidenced by Exhibit "A."

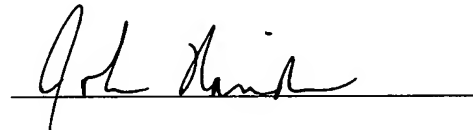
In view of the foregoing remarks, the accompanying Declaration, and the supporting exhibit submitted herewith, Applicants respectfully request that the Examiner remove Chen '242 from consideration and allow independent claims 19 and 28 and dependent claims thereon.

Conclusion

In view of the remarks set forth above, Applicants respectfully request allowance of the pending claims. If the Examiner believes that a telephonic interview will help speed this application toward issuance, the Examiner is invited to contact the undersigned at the telephone number listed below.

Respectfully submitted,

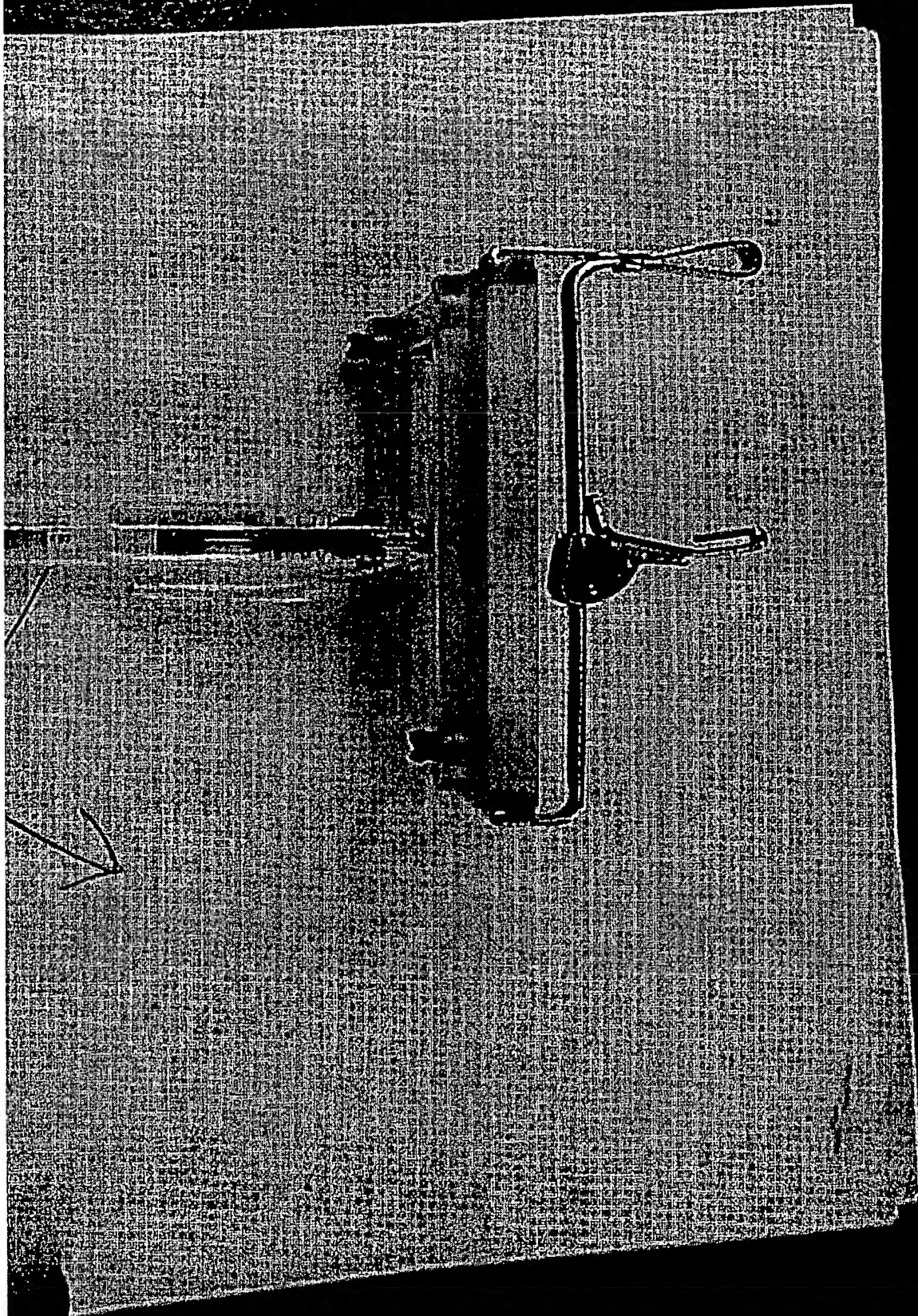
Date: October 25, 2005

A handwritten signature in dark ink, appearing to read "John M. Rariden", is written over a horizontal line.

John M. Rariden
Reg. No. 54,388
FLETCHER YODER
P.O. Box 692289
Houston, TX 77269-2289
(281) 970-4545



EXHIBIT A



BEST AVAILABLE COPY